IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 187 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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C I T

Versus

SARANG SPG. MFG. CO.

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Appearance:

MR BB NAIK FOR MR MANISH R BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/03/2001

ORAL JUDGEMENT

[ (Per : MR.JUSTICE B.C.PATEL)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench, 'A' on 8/7/1985, at the instance of revenue has referred to this Court the question arising in Reference Application Nos. 833 & 834/Ahd/1984 for assessment years 1974-75 & 1975-76. The question referred for our opinion is as under :

"Whether, on the facts and in the circumstances of the case the Tribunal was right in coming to the conclusion that though by the Finance (No.2) Act 1980, the provisions of sec. 80J of the I.T.Act, were amended with retrospective effect but the order of the Tribunal holding that capital employed for the purposes of section 80J of the I.T.Act should be without taking into account its loans and liabilities etc. could not be rectified because the retrospective amendments were under challenge before the Supreme Court ?"

2. On 7/5/1980 the Tribunal by an order held that "it is difficult to hold that the order of the Appellate Tribunal contains a mistake of law apparent from the record. In the circumstances, we are not able to entertain this application which is hereby rejected". Our attention is drawn to the facts of the case and it is submitted by learned Counsel for the Union of India that the question of applicability of section 80J of Income Tax Act amended by the Finance (No.2) Act,1980 was required to be considered. At the relevant time the amendment was not acceptable to one Lohia Machines, and therefore, the Apex Court was moved in the matter. However, by decision reported in 152 ITR 308 in case of Lohia Machines V. Union of India the contention raised by the assessee has been rejected and it is held that section 80J as amended is applicable with retrospective effect. Before the Tribunal a prayer was made that the Tribunal is required to consider the provisions, however, the Tribunal was of the opinion that when the validity of the amendment has been challenged and is in doubt it is difficult to hold that, that part of the order of the Appellate Tribunal contains mistake of law.

3. It seems that the stay which was granted against the operation of the amendment has weighed with the Tribunal and hence the aforesaid order came to be passed. In view of the decision of the Apex Court we are of the opinion that the Tribunal is required to decide the matter in accordance with the decision of the Apex Court. Hence, without answering the question we are remanding the matter to the Tribunal. Reference stands disposed of

accordingly with no order as to costs.

(B.C.Patel, J) (D.A.Mehta,J)

m.m.bhatt